

HB

156

Representative Kay Brown

ALASKA STATE LEGISLATURE

Legislative Information Office
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During Session
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Juneau, Alaska 99811
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TO: Representative Dave Donley, Chair
House Judiciary Committee

FROM: Representative Kay Brown

DATE: February 21, 1991

SUBJ: CS SS HB 156 (Judiciary) WORK DRAFT dated 2/18/92
Confidentiality in Cases of Domestic Violence & Sexual Assault

In reference to the upcoming hearing concerning House Bill 156, please find attached the following materials for inclusion in the committee packet:

- 1) CS SS HB 156 (Judiciary) WORK DRAFT dated 2/18/92
- 2) Sponsor Statement (revised 2/21/92)
- 3) Sectional Analysis (revised 2/21/92)
- 4) Fiscal Note/Department of Public Safety (revised 1/15/92)
- 5) *Annual Report to Governor Hickel and the Alaska Legislature*
Council on Domestic Violence and Sexual Assault (January 1991)
- 6) *President's Task Force on Victims of Crime, Final Report 1982*
- 7) Alaska Network on Domestic Violence and Sexual Assault
— "National Organizations Supporting Victim/Counselor
Privilege"
— "Some States with Victim/Counselor Privilege"
- 8) Letters of Support
- 9) *Anchorage Daily News* Editorial (May 9, 1991)

If you have any questions, please contact Sudy Sanders of my staff at 465-4998.

DISTRICT 12

Downtown • Fairview • City View • Bootleggers Cove • Inlet View • South Addition • Thunderbird Terrace
Eastridge • Penland Park • Airport Heights • Government Hill

SPONSOR STATEMENT

CS SS HB 156 (Judiciary) — WORK DRAFT dated 2/18/92

Providing for Privileged Communications in Cases of Domestic Violence & Sexual Assault

Domestic violence and sexual assault are growing problems in Alaska. Communities throughout the state have established shelters and safe homes in an effort to provide counseling and safety to victims of these crimes. Since FY 87, the number of nights of safety provided by funded shelters has increased by 44 percent.

As a result of the fear and stigma associated with domestic violence and sexual assault, many victims fail to seek needed medical care and counseling for their emotional trauma. In order to fully recover from domestic violence and sexual assault crimes, it is necessary for victims to discuss thoughts and feelings with someone who is trained to address these issues. Domestic violence/sexual assault counselors provide this assistance. The relationship that develops between a victim and counselor is fragile and requires trust.

Need for Legislation

Current Alaskan law discourages some victims from coming forward by allowing the court system to subpoena records that disclose all information, given in trust, between a sexual assault counselor and victim. At the request of the Alaska Network on Domestic Violence and Sexual Assault, I have introduced CS SS HB 156 (Judiciary) — WORK DRAFT dated 2/18/92 to make changes to the state laws and establish a general rule that testimony and communications between a domestic violence or sexual assault victim and a domestic violence or sexual assault counselor is privileged and confidential. The bill allows for exceptions to the privileged communication rule in certain instances, for example, such as cases of child abuse or neglect or if the victim is deceased.

CS SS HB 156 (Judiciary) — WORK DRAFT dated 2/18/92 is necessary to encourage and protect the trust relationship between victim and counselor. Victims of domestic violence and sexual assault should be allowed to choose if and when deeply personal information is to become a matter of public record. CS SS HB 156 (Judiciary) — WORK DRAFT dated 2/18/92 would

provide confidentiality for these highly personal, private and confidential communications.

CS SS HB 156 (Judiciary) — WORK DRAFT dated 2/18/92

CS SS HB 156 (Judiciary) — WORK DRAFT dated 2/18/92 would provide that the communications between a victim of domestic violence and/or sexual assault and a domestic violence/sexual assault counselor are privileged and may not be disclosed in a civil, criminal, legislative or administrative proceeding without the appropriate consent of the victim.

CS SS HB 156 (Judiciary) WORK DRAFT dated 2/18/92 would extend to all victims of domestic violence and sexual assault a testimonial privilege encompassing the contents of communication with a domestic violence or sexual assault counselor and to render immune from discovery or legal process the records of the communications maintained by the domestic violence or sexual assault program.

CS SS HB 156 (Judiciary) WORK DRAFT dated 2/18/92 would make amendments to AS 09.25 (Civil Evidence) and AS 12.45 (Criminal Trial) each adding a new language to provide that confidential communications between a domestic violence or sexual assault victim and a counselor are privileged.

CS SS HB 156 (Judiciary) WORK DRAFT dated 2/18/92 also amends and adds new sections to AS 25.35 (Domestic Violence) to establish a general prohibition, with certain exceptions, regarding compulsory disclosure of confidential communications between domestic violence and sexual assault victims and their counselors.

Exceptions to this general standard of privileged communications include cases involving:

- 1) reports of child abuse or neglect;
- 2) evidence that the victim is about to commit a crime;
- 3) a proceeding where the victim is deceased;
- 4) a communication relevant to an issue of breach by the victim or victim counselor of a duty arising out of the victim-counselor relationship;
- 5) a communication that is determined to be admissible hearsay as an excited utterance under the Alaska Rules of Evidence;
- 6) a children-in-need-of-aid proceeding under AS 47.10;
- 7) a communication made during the victim-counselor relationship if the services of the counselor were sought, obtained, or used to enable anyone to commit or plan a crime; or

- 8) a criminal proceeding concerning criminal charges against a victim of domestic violence or sexual assault where the victim is charged with a crime under AS 11.41 against a minor.

Further, the legislation provides that the location of a safe house of the identity of a domestic violence counselor may not be disclosed in a civil, criminal, legislative or administrative proceeding unless the court or hearing officer determines that the information is necessary and relevant to the facts of the case.

Discussion

Confidentiality for victims working with domestic violence and sexual assault counselors and shelters serves both the needs of victims and the needs of society to help reduce the damage done by domestic violence and sexual assault crimes.

- As a result of the fear and stigma associated with domestic violence and sexual assault, many victims fail to seek needed medical care and counseling for the emotional injuries resulting from the crime.
- Without adequate psychological support, many of these victims fail to report the crime and cooperate with the criminal justice system.
- Domestic violence and sexual assault counselors are specifically trained to help victims recover from an assault; skills and techniques employed by counselors are designed to encourage the victim to discuss the emotional aftermath of an assault and thereby normalize the life of the victim.
- Full recovery from an assault requires that victims discuss thoughts and feelings that a victim is unlikely to discuss without the assurance of confidentiality, and this confidentiality should be accorded to all assault victims who desire services whether or not they are able to afford the services of private psychiatrists and psychologists.
- These victims hesitate to turn to friends and family because of the social stigma attached to domestic violence and sexual assault.

In developing this legislation, I have worked very closely with both Joanne Lopez and Barb Miklos of the Alaska Council on Domestic Violence/Sexual Assault, the Department of Public Safety and Cindy Smith, Executive Director of the Alaska Network on Domestic Violence and Sexual Assault. Laurie Otto, House Judiciary Committee Aide to Representative Dave Donley and former Chief Prosecutor for the Department of Law has also assisted me in the development of this legislation.

SECTIONAL ANALYSIS

CS SS HB 156 (Judiciary) — WORK DRAFT dated 2/18/92
Confidentiality Regarding Domestic Violence & Sexual Assault

Section 1

Amends AS 09.25 (Code of Civil Procedure) adding a new section to provide that confidential communications between a domestic violence or sexual assault victim and a counselor are privileged.

Section 2

Amends AS 12.45 (Code of Criminal Procedure) adding a new section to provide that confidential communications between a domestic violence or sexual assault victim and a counselor are privileged.

Section 3

Amends AS 25.35 to provide that communications between a domestic violence or sexual assault counselor and a domestic violence and sexual assault victim are privileged. Compulsory disclosure of these communications is generally prohibited, with certain exceptions, and may not be disclosed in a civil, criminal, legislative or administrative proceeding without the "appropriate consent" of the victim or the victim's parent, legal guardian, or guardian ad litem. Provision is made to allow a minor the opportunity to knowingly waive the confidentiality privilege established under this section if a court determines that the minor is capable of knowingly waiving the privilege. This section provides for exceptions to the general rule of confidentiality in certain instances, including among others, cases involving child abuse or neglect under AS 47.17 or if the victim is deceased.

This section also provides that the location of a safe house or the identity of a domestic violence counselor may not be disclosed in a civil, criminal, legislative or administrative proceeding unless the court or hearing officer determines that the information is necessary and relevant to the facts of the case.

ALASKA NETWORK
ON
DOMESTIC VIOLENCE
AND
SEXUAL ASSAULT

130 Seward, No. 301 • Juneau, Alaska 99801 • (907) 586-3650

Abused Women's Aid In Crisis (AWAIC);
Advocates for Victims of Violence (AVV);
Aiding Women In Abuse and Rape Emergencies (AWARE);
Alaska Women's Resource Center (AWRC); Arctic Women in Crisis (AWIC);
Bering Sea Women's Group (BSWG); Emmonak Women's Shelter;
Kodiak Women's Resource & Crisis Center (KWRCC);
Manitlaq Regional Women's Crisis Program;
Tongass Community Counseling Center; Parent Aid Family Support Center;
Safe & Fear-Free Environment (SAFE); Sitkans Against Family Violence (SAFV);
Seward Life Action Council (SLAC); Southwestern Alaska Council
for the Prevention of Child Sexual Assault (SWACPCSA);
South Peninsula Women's Services (SPWS);
Standing Together Against Rape (STAR); Tundra Women's Coalition (TWC);
Unalaskans Against Sexual Assault & Family Violence (USAFV);
Valley Women's Resource Center (WVRC);
Women In Crisis Counseling & Assistance (WICCA);
Women In Safe Homes (WISH); Women's Resource & Crisis Center (WRCC)

NATIONAL ORGANIZATIONS SUPPORTING VICTIM/COUNSELOR PRIVILEGE

- * President's Task Force on Victims of Crime (1982)
- * The National Center on Women & Family Law
- * The National Organization for Victim Assistance
- * National Victim Center
- * National Coalition Against Domestic Violence
- * National Coalition Against Sexual Assault
- * National Network for Victims of Sexual Assault
- * National Woman Abuse Prevention Project

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Unalaskans Against Sexual Assault & Family Violence (USAFV);
Valley Women's Resource Center (VWRC);
Women In Crisis Counseling & Assistance (WICCA);
Women In Safe Homes (WISH); Women's Resource & Crisis Center (WRCC)

SOME STATES WITH VICTIM/COUNSELOR PRIVILEGE*

Alabama

California

Connecticut

Florida

New Hampshire

Illinois

Indiana

Iowa

Maine

Massachusetts

Minnesota

New Jersey

New Mexico

North Dakota

Pennsylvania

Utah

Washington

Wyoming

*Primarily limited to victims of sexual assault and/or domestic violence, although some states include victims of all violent crimes. Also, federal statute under the Victims of Crime Act requires confidentiality of victim records for organizations receiving VOCA funding. About half of Alaska's dv/sa programs receive VOCA funds.

with progress to the point that sexual assault victims do not feel shamed by the crime. In the meantime, victims should not routinely be forced to surrender their privacy.

But that's not the only concern in the equation. A careful balancing against the public's right to know is needed. It's a difficult task, one that is best not dictated by state legislators.

But . . .

Legislature has other ways to help

The proposed rape shield law described above goes too far, but the legislature has other ways to help victims of rape and domestic violence.

First and foremost is money. The state offers grants to 23 agencies that help prevent and treat sexual assault and domestic violence. Vetoes inflicted by outgoing Gov. Steve Cowper, together with new cuts proposed by Gov. Wally Hickel, would reduce those grants by 13 percent.

The House has voted to restore both sets of cuts. But even so, the \$5.9 million is barely adequate to help everyone who turns to rape crisis lines and shelters for battered women. And the Senate's figure falls \$400,000 short of the House mark.

In addition to spending money, legislators can act on several bills.

One would help victims who need court orders to protect themselves against domestic violence. The right to get an order would be extended to someone whose dating partner becomes threatening. As the murder of Sandra Pogany last summer shows, a spurned lover can turn dangerous even when the relationship falls short of marriage or living together.

Another change would extend the legal privilege of confidentiality to domestic violence and rape counselors. Victims are less likely to seek help if they fear that what they tell a counselor may be aired out in court.

A final worthwhile change would allow shorter presumptive prison terms for victims of domestic violence who turn on their assailants. Enduring abuse doesn't legally excuse assault or murder, but it could justify a lighter sentence.

The House has either passed or is making good progress on these proposals. Work on the Senate side has been slower. If lawmakers are serious about helping those who suffer sexual assault and domestic violence, they'll pass these measures — and restore full funding for agencies serving victims — before the session ends.

QUOTABLE

"This stuff has been used for 4,000 years before the birth of Christ. All of us farmers are conservationists and environmentalists to a point, and if it was harmful I sure wouldn't be doing it."

— Byron Hollembeak, on his plan to use sewage sludge from Fairbanks as fertilizer on his Delta Junction farm.

"The question for

But in New Orleans the panhandler's art is more refined. Nobody much asks for money without giving something.

The man with the tongue was on Bourbon Street and right out of a David Lynch movie. He wore a stocking cap, three days of beard and a drab olive jumpsuit.

First he did a mock strip, with a slow teasing roll of his nylon socks, taking ad-

back like a sword s
er. Women squealed.

When he passed revelers pressed for fill it. His overhead: than most.

Mimes, for instance those elaborate costumes that, considering sult Orleans, must need cleaning every now then.

Street musicians at ferent species of the

Rioters suffered no

WASHINGTON — Before I became a columnist, I was a reporter — a riot reporter too. I covered riots in Washington, D.C., Harlem, Brooklyn and one of the very worst (26 dead) in Newark. It was in Newark that I got religion — converted to a mild form of Richard Daleyism. It was the late Chicago mayor who suggested busting some heads.

I would not go anywhere near that far. But Washington, D.C., which had itself a fine little riot in a mixed Latino neighborhood for two nights, seemed to go as far as possible in the other direction. In full view of television viewers, stores were looted, cars torched, city buses attacked and the police — well, the police did little. It was not until after the midnight curfew on the second night of the riot that significant arrests were made. Washington had permitted unpardonable no-fault rioting.

Some would disagree. There was "fault," and it was linked to something called "grievances" — lack of housing, jobs and, of course, the cultural differences between Latino immigrants and the local constabulary. (The shooting of a Latino by a police officer triggered the riot.) But in



RICHARD COHEN

Newark I learned the matter how legitimate underlying grievances. is a chance to have a time and to get some summer goods on the b all terms.

Once, I had thought wise. I had read the Watts rioters of 1963 exercised some discretion what they trashed or looted. Only the stores of people who lived out of the neighborhood were hit.

But in Newark, I door-to-door after the trying to find out who owned the looted stores: real people. I was often — good people, kind people. The residents shook their heads in disbelief. Look what had happened to the neighborhood.

DOONESBURY



HOUSE COMMITTEE REPORT

(7)
Date Referred: April 8, 1991.

FURTHER REFERRALS:

Judiciary
Finance

Date of Committee Action: 4-22-91

The HEALTH, EDUCATION AND SOCIAL SERVICES Committee considered:

SSHB 156

SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 156

CONFIDENTIALITY/DOM. VIOLENCE COUNSELORS

"An Act providing that communications between a domestic violence or sexual assault victim and a domestic violence or sexual assault counselor are privileged and may not be disclosed, with certain exceptions; prohibiting the disclosure of the location of certain types of facilities used by victims of domestic violence or sexual assault and the identities of domestic violence or sexual assault counselors; and providing for an effective date."

RECOMMENDATIONS: [] the same title
 be replaced with _____ [] a new title

[] have attached amendments(s)

[] do pass

[] do not pass

[] no recommendations

[] individual recommendations

[] additional referral to the _____ Committee

ADOPTS: _____ letter of Intent

ATTACHES NEW FISCAL NOTE(S): _____ (Dept)

APPROVES PREVIOUS: _____ (Dept/Date)

[] fiscal impact _____

[] fiscal note(s) _____

[] zero fiscal note DPS

[] zero fiscal note(s) _____

SIGNING <u>DO</u> PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
Chris Davis	✓				
Mary Miller	✓				
Mark Anderson	X				
Betty Davis	✓				
Kathy Cas	✓	(CARNEY)			
Deborah	✓	(LINCOLN)			


 CO-CHAIRMAN'S SIGNATURE

Representative Kay Brown

ALASKA STATE LEGISLATURE

Legislative Information Office
3111 C Street #435
Anchorage, Alaska 99503
(907) 561-7627

During Session
P.O. Box V
Juneau, Alaska 99811
(907) 465-4998

TO: Representative Donley, Chair
House Judiciary

FROM: Representative Kay Brown *afm*

DATE: April 25, 1991

SUBJ: HB 156 - Confidentiality in Cases of Domestic Violence and
Sexual Assault

The purpose of this memorandum is to request that you schedule HB 156 at your earliest possible convenience. A packet of background material will be submitted for committee members this week. If you have any questions, please contact Cathy Donadio of my staff at 465-4998.

DISTRICT 12

Downtown • Fairview • City View • Bootleggers Cove • Inlet View • South Addition • Thunderbird Terrace
Eastridge • Penland Park • Airport Heights • Government Hill

SPONSOR STATEMENT

SSHB 156 — Providing for Privileged Communications in Cases of Domestic Violence & Sexual Assault

Sponsor Substitute for House Bill 156

SSHB 156 would provide that the communications between a victim of domestic violence and/or sexual assault and a domestic violence/sexual assault counselor are privileged and may not be disclosed in a civil, criminal, legislative or administrative proceeding without the written consent of the victim.

This privilege would be held with the following exceptions:

- 1) If there is evidence during the discussion that a child is suffering from abuse or neglect;
- 2) The counselor has reason to believe either the victim or another person is in danger of being severely hurt or killed;
- 3) The victim is deceased.

Further, the legislation provides that the location of a safe house of the identity of a domestic violence counselor may not be disclosed in a civil, criminal, legislative or administrative proceeding.

Discussion

Domestic violence and sexual assault are growing problems in Alaska. Communities throughout the state have established shelters and safe homes in an effort to provide counseling and safety to victims of these crimes. Since FY 87, the number of nights of safety provided by funded shelters has increased by 44 percent.

As a result of the fear and stigma associated with domestic violence and sexual assault, many victims fail to seek needed medical care and counseling for their emotional injuries. In order to fully recover from these crimes it is necessary for victims to discuss thoughts and feelings with someone who is trained to address these issues. Domestic violence/sexual assault counselors provide this assistance. The relationship that develops is fragile and requires trust.

Current Alaskan law discourages some victims from coming forward by allowing the court system to subpoena records that disclose all information,

Sponsor Stmt

Revision Date: _____
 Title: An Act providing communications
are privileged
 Sponsor: Brown, et al
 Requestor: _____

Department Affected: Public Safety
 BRU: Council on Domestic Violence & Sexual
 Component: Assault

COMPONENT SERIAL NO.

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EXPENDITURES/REVENUES: (Thousands of Dollars) (Inflation not Included)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
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REVENUE	-0-	-0-	-0-	-0-	-0-	-0-
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FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER/PROG RCPT						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

Estimate of current year impact None

ANALYSIS: (Attach a separate page if necessary)

This bill is expected to have no fiscal impact on the Council on Domestic Violence and Sexual Assault.

Prepared by: Barbara Miklos, Executive Director *Bm* Phone: 465-4356
 Division: Council on Domestic Violence & Sexual Assault Date: April 19, 1991
 Approved by Commissioner: Richard L. Burton *Richard L. Burton*
 Agency: Department of Public Safety Date: _____

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

COUNCIL ON
DOMESTIC VIOLENCE
AND SEXUAL ASSAULT

ANNUAL REPORT
TO
GOVERNOR HICKEL
AND THE
ALASKA LEGISLATURE

JANUARY 1991

excerpts - Council on Dom. Violence Report

COUNCIL MEMBERS AND STAFF

COUNCIL MEMBERS:

Mary Pete, Chair, Bethel (Public Member)

Paula Haley, Anchorage (Public Member)

Andrew Klamser, Homer (Public Member)

Karen Crane, Department of Education

Gayle Horetski, Department of Public Safety

Vacant, Department of Health and Social Services

Vacant, Department of Law

COUNCIL STAFF:

Barbara Miklos, Executive Director

Marcia Lynn McKenzie, Program Coordinator

Wil Coloma, Statistical Technician

Susan King, Secretary

Council on Domestic Violence
and Sexual Assault

Department of Public Safety

P.O. Box N

Juneau, AK 99811-1200

Phone: (907) 465-4356

Location:

Public Safety Building

450 Whittier Street

Room 204

Juneau, Alaska

INTRODUCTION

"We found that the perception you shared when you gave us our charge is unfortunately true. The innocent victims of crime have been overlooked, their pleas for justice have gone unheeded, and their wounds - personal, emotional and financial - have gone unattended."

In a letter to President
Ronald Reagan from the
President's Task Force
on Victims of Crime, 1982

"The problem of family violence has existed for generations, yet it is only recently that this phenomenon has begun to receive the attention it deserves."

Chief William L. Hart
Chairman, U.S. Attorney
General's Task Force on
Family Violence

Societies and shelters for the protection of animals existed in the United States before there was legislation to protect children who were abused. We have made progress since then. As a country, we have developed legislation and programs to protect children and adults who are victims of family violence. As a state, Alaska has programs and policies that are models for the rest of the country. However, much still needs to be accomplished. According to data compiled by the staff of the U.S. Senate Judiciary Committee, there are three times as many animal shelters in the United States as there are shelters for battered women.

Domestic violence and sexual assault continue to be major problems in our country and our state. People continue to be killed, beaten and raped in record numbers. Although violent crime in general is declining, violent crimes against women (including domestic violence) are increasing. Since 1974, the rate of assaults against young women (ages 20 - 24) has risen almost 50%; for young men it has decreased. Data from the National Crime Survey shows that women are the victims of violent crime committed by family members at a rate three times that for men. Also, according to the Survey, spouses or ex-spouses commit more than half of all violent crimes committed by relatives against women.

A woman is beaten every 18 seconds and 4,000 battered women are killed every year in the United States. Nationwide, more than one million abused women each year seek medical assistance for injuries caused by battering. In Alaska, 26% of adult women have been physically abused by a spouse sometime during their lives and most of the battered women were abused at least once a month. It is estimated that a minimum of 13,200 women living in Alaska have required medical treatment by a doctor or hospital for injuries sustained by abuse at some time in their life. In 1988, fifty

percent of female murder victims in Alaska were killed by their husbands or boyfriends.

Children raised in violent homes suffer the effects of living in this environment and are at higher risk for physical and sexual abuse. Children raised in violent homes are 1500% more likely to be physically abused or seriously neglected. Nearly fifty percent of abusive husbands batter their wives when they are pregnant, making these battered women four times more likely to bear infants of low birth weight. These women had twice as many miscarriages as non-battered women.

Former U.S. Surgeon General Dr. C. Everett Koop identified domestic violence as the number one health threat to women and declared it to be a public health issue. In one of his final speeches as U.S. Surgeon General, Koop stated: "The mind set that any type of violence that results in physical and mental damage is a private or family matter or a tradition should be abhorrent to us all. Battery is the single most significant cause of injury to women in this country." Dr. Koop went on to note that in the United States, an estimated 40% of all women have experienced some type of sexual abuse as children and as many as 44% of adult women report completed or attempted rape, including rape by their husbands or other family members.

People from all walks of life have come to recognize the seriousness of the problems and the need for a comprehensive and coordinated response to domestic violence and sexual assault. A study by the National Council of Juvenile and Family Court Judges recommends that courts treat family violence as a serious crime. The Honorable Stephen B. Herrell, Chairman of the group and a judge from Portland, Oregon, says that violence against women and children has created a generational cycle of violence that cannot be broken without strong intervention by the courts.

Responses to sexual assault have been improved, but sexual violence against women continues to rise. During the past ten years, rape rates have risen nearly four times as fast as the total crime rate. According to data provided by a criminological study conducted in 1990, rape remains the most under-reported of all major crimes; only 7% of all rapes are reported to police. One in five adult women will be raped at some time in their lives and one in four women now in college will be attacked by a rapist. Alaska continues to have one of the highest incidences of rape in the country. In 1989 in Alaska, there were 53 reported cases of forcible rape against adult women per 100,000 population compared to the national rate of 38 cases per 100,000.

Services for victims of domestic violence and their children are crucial in order to save lives and reduce the pain and suffering caused by these crimes. Victims of sexual assault must receive crisis intervention services so they can overcome the trauma. Without assistance, they may continue to relive the event and live in fear for their life and safety. The report from the U.S. Attorney General's Task Force on Family Violence states that "Shelters are an important resource for a diverse group of victims of family violence who must leave home to escape life-threatening

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abuse and have nowhere else to go. Among the most important services shelters offer for battered women and their children are immediate safety, counseling, referrals to alcohol and drug treatment programs and assistance in seeking employment and permanent housing.

Services for child victims must be available to help them cope with the horrors they have encountered. Children from violent homes suffer emotional and physical disorders as a result of their family situations. Many of these children are victims of physical and sexual abuse, who need to be protected and helped. Helping these children will not only ease the pain, but also prevent future problems. Alcohol and other drug abuse, suicide and criminal behavior are often caused by abuse suffered in childhood. Services for children are important to stop the cycle of abuse.

Treatment for batterers is an integral part of the system to protect victims. Experience has shown that most battered women return to the violent relationships. This happens for many reasons, including the lack of financial resources to allow them to live independently. Without counseling and treatment for batterers, violence in these relationships generally becomes more frequent and severe, often resulting in death.

Alaska is fortunate to have a comprehensive, coordinated system for addressing the pain and suffering caused by family violence. In FY91, the Council on Domestic Violence and Sexual Assault is funding 23 community-based programs to provide services to victims of domestic violence and their families. These programs also provide important educational services to their communities as well as outlying communities. Without an all-out effort by community members, family violence will not be stopped. In FY90, Council-funded programs served 9,729 clients. Almost 8,000 of these clients were victims of domestic violence and their children. These victims and their children were provided almost 53,000 nights of safety in shelters or safe homes. The need for these services can be seen in the numbers of clients as well as the tremendous increases in demand for services. Since FY87, the number of nights of safety has increased by 44%.

The mission of the Council on Domestic Violence and Sexual Assault is to provide immediate safety and support to victims of domestic violence and sexual assault in life-threatening situations and to reduce the incidence of domestic violence and sexual assault in Alaska. The Council accomplishes this through serving as a funding agency for community-based programs. The Council processes applications for funding and monitors programs that receive grants and provides technical assistance to programs and other community groups. It also serves as a planning and coordinating agency for domestic violence and sexual assault services provided by various agencies. This report presents major Council initiatives in 1990, describes programs funded by the Council, presents statistical data gathered from programs in FY90 and identifies issues of concern and possible solutions.

obtain injunctive relief orders in cases of domestic violence as well as other protections provided to victims of domestic violence be expanded to include people in dating relationships. Police officers may arrest for domestic violence misdemeanor assaults even if it was not committed in their presence; it is also important that this protection be provided in dating relationships.

2. Teen Violence, an Issue for Legislative Consideration

In December, 1989, the Council held a statewide teleconference on teen violence. After hearing from the people testifying, the Council agreed the problem merited the attention of the Legislature and requested that the House and/or Senate Health, Education and Social Services Committees hold hearings on the topic of teen violence. Many people who testified at the Council's teleconference wanted to address their concerns to legislators, and had suggestions for legislation and for needed services.

People who testified work with teens either through domestic violence programs, youth-serving agencies, or schools. Many people testified to the growing trend toward violence among youth and observed that young people state that "violence is a way to have fun". A clinical psychologist in Fairbanks stated that he feels teen violence is symptomatic of societal breakdown.

Many teens are victims of violence. One participant who works with pregnant teenagers spoke of the many young women who are either present or past victims of abuse, as well as some who are abusive to their own child. For some, violence begins in the womb.

A representative from the Division of Public Health, Department of Health and Social Services, testified that violence has replaced infection as the major cause of death for adolescents in the United States, with violent deaths accounting for 77% of all adolescent deaths. Accidents are the highest causal factor, with alcohol being implicated in over half the accidental deaths. Homicide is the second leading cause of teenage fatality in the U.S.; with a 300% increase of teenage homicide between 1950 and 1980. The third leading cause of teenage death is suicide, quadrupling since 1950.

3. Confidentiality of Victim Counseling

Domestic violence and sexual assault programs have identified the need to develop legislation that makes victim counseling legally privileged and not subject to defense discovery or subpoena. This type of legislation is important because it protects victims from further abuse by the system. If the confidential communications exchanged between victims and counselors during treatment can be used as evidence in criminal proceedings, counseling may not benefit victims, and, in fact, may add to their trauma. Victims often speak to their counselors about fears and feelings arising from the crime. Those who are

under the impression that they are revealing such information solely for therapeutic purposes often feel betrayed when their counselors are compelled to disclose their communication before the public at an open trial. Victims who realize in advance that their communications may be subject to disclosure may avoid counseling altogether. The President's Task Force on Victims of Crime recommended that legislation be enacted making designated victim counseling legally privileged.

PRESIDENTS
TASK FORCE ON
VICTIMS OF CRIME

Final Report

December 1982

I was upset when I was asked about my new location where I lived, and when I had to give my children's names, the man who had caused these problems was sitting in the courtroom and I was telling him how he or someone else could find me.—a victim

This experience brought me closer to death than one could ever imagine, not only because of the gun, but because of the rape itself. I felt ashamed, and I thought I wanted to die. My heart felt like it was going to burst. Crying and talking with people I could trust helped to relieve the pressures. I needed to share feelings with people who would keep my secret for however long I needed them to.—a victim

When victims or witnesses testify, they are frequently asked for their home address, sometimes by the prosecutor. Prosecutors should stop soliciting this sensitive information and should object to defense efforts to obtain it. Only when the defense is able to establish that the address is clearly relevant to credibility or to the facts of the case should the question be allowed.

Executive and Legislative Recommendation 2:
Legislation should be proposed and enacted to ensure that designated victim counseling is legally privileged and not subject to defense discovery or subpoena.

A number of organizations and victim/witness units provide psychological crisis counseling to ease the real and profound psychological trauma of victimization. Since the development of rape crisis centers, the need for and benefits derived from counseling for rape victims has become well established. Testimony before the Task Force confirms that counseling is necessary for many violent crime victims as well as their families. Such counseling has proven extremely beneficial and should be strongly encouraged at all levels.

Although some centers have made psychiatrists or psychologists available, the vast majority of the work has been done by social workers, nurses, or by people who have been victims themselves. During the counseling process, victims speak of their fears and feelings arising from the crime; these reactions are often related to their personal history and psychological makeup.

Failure to extend confidentiality to crisis counseling incurs the risk of undermining the effectiveness of the counseling. Some victims who need this kind of help now fear to seek it. Without the protection of confidentiality, victims have found their files subpoenaed by the defense, and feel betrayed when thoughts and feelings that they considered private are opened to public scrutiny in a courtroom.

Statutes that were passed before the importance of victim counseling became recognized extend confidentiality only to counseling by psychologists and psychiatrists. These statutes protect only those who

can afford private treatment by these professionals; they do not shield the vast majority of victims.

At least one state has enacted a statute making rape victims' communications to counselors legally privileged.¹ While this is a step in the right direction, we believe that the privilege should encompass the counseling of all crime victims. Because of the responsibility of the prosecutor to afford discovery to the defendant, it is not contemplated that this counseling privilege extend to the prosecutor's office.

It was a great relief to have someone to talk to, who would in no way pass onto others what I thought, felt, or did at that confusing time.—a victim

Notes

1. The State of Pennsylvania has codified this privilege in 42 Pa. C.S.A. § 5945.1, "Confidential communications to sexual assault counselors."

4/18/91
Rep. Kay Brown

Sectional Analysis

SSHB 156 — Confidentiality Regarding Domestic Violence & Sexual Assault

Section 1

Findings and Purpose.

Section 2

Amends AS 18.66 to provide that communications between a domestic violence or sexual assault counselor and a domestic violence or sexual assault victim would be privileged and may not be disclosed in a civil, criminal, legislative or administrative proceeding without the written consent of the victim. Provides for exceptions to this rule of confidentiality in cases involving child abuse, if the victim is deceased, or if the failure to disclose information would place the victim or another person in imminent danger. Provision is also made to allow a minor to waive the confidentiality privilege established under this section.

Further, the legislation provides that the location of a safe house or the identity of a domestic violence counselor may not be disclosed in a civil, criminal, legislative or administrative proceeding.

Section 3

Immediate effective date.

Sectional Analysis



Abused Women's Aid in Crisis, Inc.

100 W. 13TH AVENUE • ANCHORAGE, AK 99501 • (907) 279-9581

TESTIMONY IN SUPPORT OF HB156

Submitted by Nancy K. Scheetz-Freymler
Executive Director

I hope with my testimony this morning to emphasize critical importance and need for HB156 in terms of the safety of women impacted by domestic violence and the ability to provide the services they need.

At AWAIC we have seen more than 600 women per year involved in domestic violence. After 14 years, we have seen thousands of women enter both the shelter and the justice system. Therefore, I believe we speak with some authority. I will divide my testimony into justified support from both the women's and the agency's point of view. Confidentiality needs to be protected for the benefit of both.

1. FOR THE WOMEN/VICTIMS—Confidentiality must be protected for a simple issue of safety or potentially saving one's life. Release of files must be the woman's choice. Just this week, a woman sought help. Her partner had assaulted her and was threatening to kill her. She had moved three times. Still, she received 15 calls per day where he taunted her with, "not today honey". If she brought charges and files could be subpoenaed, could the system guarantee her safety—guarantee prosecution and conviction? I think not. Other pieces of the justice system must be in place before we can continue to place the victim in jeopardy without any choice in the matter. Release of "her files" needs to be "her choice". She is the one taking all the risks. She is the one needing to assess the risks and the consequences. It is her life. Many brave women make the choice to release their file, to prosecute. When they make that choice, we do all we can to support them.

In addition, what are the consequences to the woman; if she seeks help at our agency, tells her story, displays justified frustrations and anger about what has been done to her, then it is used against her in court. She not only loses trust in anyone, she loses the opportunity to receive help to change her situation.

2. FOR AWAIC—How can we help the woman in crisis if everything she says can be used against her in court? The privileges granted to other professionals protect the communication so that the individual may be served.





Abused Women's Aid in Crisis, Inc.

100 W. 13TH AVENUE • ANCHORAGE, AK 99501 • (907) 279-9581

Page 2. Testimony in Support of HB 156

We, on the other hand, have been forced to make some very significant choices: guarding the safety and trusted communication of the client or possibly breaking the law.

We have worked with attorneys to quash subpoenas when the notice and timing have been sufficient. That method can work but depends on the situation and the attitudes and opinions of the attorneys in that particular case. We have stood outside a courtroom waiting to be called and ready to deny the information. Fortunately, our testimony was not needed. We have stood before a judge and compromised for in-camera-review of the file. This was not an effective solution for us. Again, the file is not totally protected, but subject to the opinion and discretion of that particular judge.

We have seen men use the subpoena power for the reason of locating the woman, placing her in jeopardy and going against our prime reason to exist—to provide safety and confidentiality.

We have seen three domestic violence-related murders in Anchorage just this past year. Can the court system promise this woman protection when they have made placed her life in jeopardy. I do not think so. This is a serious social issue with high risks and highly serious consequences.

We are not saying we do not believe in prosecution. We support strong prosecution. We are saying the victim should have the choice to release her files, her confidential communication with a counselor. She suffers the consequences. She should have the choice of whether to take the risks. And AWAIC should be protected so that we can offer the confidentiality needed to provide our helping service. Otherwise, the very nature, the very reason for our existence is eroded.



ALASKA NETWORK ON DOMESTIC VIOLENCE AND SEXUAL ASSAULT

130 Seward, No. 301 • Juneau, Alaska 99801 • (907) 586-3650

Abused Women's Aid in Crisis (AWAIC);
Advocates for Victims of Violence (AVV);
Aiding Women in Abuse and Rape Emergencies (AWARE);
Alaska Women's Resource Center (AWRC); Arctic Women in Crisis (AWIC);
Bering Sea Women's Group (BSWG); Emmonak Women's Shelter;
Kodiak Women's Resource & Crisis Center (KWRCC);
Maniklan Regional Women's Crisis Program;
Tongass Community Counseling Center; Parent Aid Family Support Center;
Safe & Fear-Free Environment (SAFE); Sitka's Against Family Violence (SAFV);
Seward Life Action Council (SLAC); Southwestern Alaska Council
for the Prevention of Child Sexual Assault (SWACPCSA);
South Peninsula Women's Services (SPWS);
Standing Together Against Rape (STAR); Tundra Women's Coalition (TWC);
Unalaskans Against Sexual Assault & Family Violence (USAASFV);
Valley Women's Resource Center (VWRC);
Women in Crisis Counseling & Assistance (WICCA);
Women in Safe Homes (WISH); Women's Resource & Crisis Center (WRCC)

HOUSE BILL 156

The Alaska Network on Domestic Violence and Sexual Assault strongly supports House Bill 156, which provides that communications between a victim of domestic violence or sexual assault and a domestic violence/sexual assault counselor are privileged and may not be disclosed in a civil, criminal or legislative proceeding without the victim's consent.

The first rape crisis centers and domestic violence shelters in Alaska opened their doors in the mid-1970's as part of a national movement toward recognizing the pervasiveness of these crimes and the long-term trauma and emotional needs suffered by victims of domestic violence and sexual assault. Rape and domestic violence assaults were commonly underreported and underprosecuted because of the stigma attached to the crimes, and because of the victim's fear--both of the perpetrator, and of the criminal justice system itself, where the victim's credibility rather than the defendant's culpability often became the focus of the trial.

The 7700 victims and minor children served by Alaska's domestic violence and sexual assault programs last fiscal year came to our programs only because they felt that we would respect their confidences and would not take their decision-making out of their hands. The counseling and advocacy offered by sexual assault and domestic violence programs has led to increased reporting and greater success in prosecution of both crimes in Alaska. This has, paradoxically, been based on an assurance to the victim that what is said to a program counselor or advocate will be maintained in absolute confidentiality -- that we won't tell her friends, her family, or even the police or courts what she has said to us unless she decides this is what she wants.

Programs make this promise to their clients, and make it in good faith. However, as rape crisis centers and domestic violence shelters have become an integral part of society, they have attracted the attention of attorneys seeking information about victims. Here, as in

the rest of the nation, tactics such as subpoenas of counselors and their files are threatening to undermine the victim/counselor relationship -- and thereby the effectiveness of the programs themselves -- by forcing disclosure of confidential information. And we know that such forced disclosures do effect the actions of victims. When the Pennsylvania Supreme Court refused to provide privilege in a widely publicized rape case, the number of callers who refused to give even their names on the crisis line of the center involved in the case rose from 32% to 61%.

In response to this problem, states began enacting privilege for the victim/counselor relationship. The first such statute was enacted 11 years ago in California. Since that time 24 states have enacted such statutes which focus on domestic violence and/or sexual assault victims (although 5 states have provisions for all victims of violent crimes).

The Network believes that the victim/counselor relationship clearly meets the criteria laid out by Wigmore in his Rules of Evidence. Communications are originated in confidence that they will not be disclosed; this confidentiality is clearly essential to the relationship between the parties; the relationship is one which society has found to be valuable and which the State of Alaska clearly supports, and the injury done by the violation of confidentiality adversely effects not only the relationship itself, but the very ability of the State to address these crimes effectively.

The Federal Victims of Crime Act also prohibits programs receiving VOCA funds from disclosing records in administrative or judicial proceedings. Fifteen of the twenty-three programs funded by the Council on Domestic Violence & Sexual Assault receive VOCA funds.

The current lack of such a privilege in state law also tends to promote inequity of treatment based on income. If a victim has the money to consult a psychiatrist or an attorney regarding her situation, her communications are protected by State law. Many of the victims who come to our programs cannot afford either of these alternatives, although their need for protected communication is the same.

The Network urges your support for this important bill.

ALASKA NETWORK
ON
DOMESTIC VIOLENCE
AND
SEXUAL ASSAULT

130 Seward, No. 301 • Juneau, Alaska 99801 • (907) 586-3650

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Kodiak Women's Resource & Crisis Center (KWRC);
Manilaq Regional Women's Crisis Program;
Tongass Community Counseling Center; Parent Aid Family Support Center;
Safe & Fear-Free Environment (SAFE); Sitkas Against Family Violence (SAFV);
Seward Life Action Council (SLAC); Southwestern Alaska Council
for the Prevention of Child Sexual Assault (SWAC-PCSA);
South Peninsula Women's Services (SPWS);
Standing Together Against Rape (STAR); Tundra Women's Coalition (TWC);
Unalaskan Against Sexual Assault & Family Violence (USAFV);
Valley Women's Resource Center (VWRC);
Women in Crisis Counseling & Assistance (WCCA);
Women in Safe Homes (WISH); Women's Resource & Crisis Center (WRCC)

NATIONAL ORGANIZATIONS SUPPORTING VICTIM/COUNSELOR PRIVILEGE

- * President's Task Force on Victims of Crime (1982)
- * The National Center on Women & Family Law
- * The National Organization for Victim Assistance
- * National Victim Center
- * National Coalition Against Domestic Violence
- * National Coalition Against Sexual Assault
- * National Network for Victims of Sexual Assault
- * National Woman Abuse Prevention Project

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SOME STATES WITH VICTIM/COUNSELOR PRIVILEGE*

Alabama
California
Connecticut
Florida
New Hampshire
Illinois
Indiana
Iowa
Maine
Massachusetts
Minnesota
New Jersey
New Mexico
North Dakota
Pennsylvania
Utah
Washington
Wyoming

*Primarily limited to victims of sexual assault and/or domestic violence, although some states include victims of all violent crimes. Also, federal statute under the Victims of Crime Act requires confidentiality of victim records for organizations receiving VOCA funding. About half of Alaska's dv/sa programs receive VOCA funds.

ALASKA NETWORK
ON
DOMESTIC VIOLENCE
AND
SEXUAL ASSAULT

130 Seward, No. 301 • Juneau, Alaska 99801 • (907) 586-3650

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Women in Safe Homes (WISH); Women's Resource & Crisis Center (WRCC)

What are the recognized requirements for the creation of privileges which provide protection from the disclosure of communications?

1. The communication must originate in confidence that it will not be disclosed.
2. The element of confidentiality must be essential to the full and satisfactory maintenance of the relationship between the parties.
3. The relationship must be one which, in the opinion of the community, must be sedulously fostered.
4. The injury that would inure to the relationship must be greater than the benefit thereby gained for the correct disposal of litigation.

Source: Wigmore's Rules of Evidence, 2291 and 2285, McNaughton Rev. Ed 1961

Bill No: DRAFT CSSSHB 156 (JUD)

Date: February 28, 1992

Contact: Joanne F. Lopez
465-4356

Title: "An act providing that communications between a domestic violence or sexual assault victim and a domestic violence or sexual assault counselor are privileged ... "

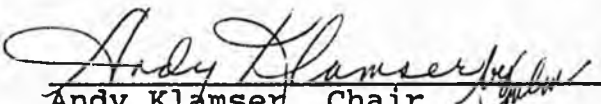
The Council on Domestic Violence and Sexual Assault supports DRAFT CSSSHB 156 (JUD) which provides that communications between a victim and a domestic violence or sexual assault counselor are privileged.

Confidentiality is essential to assure victim safety. The Council on Domestic Violence and Sexual Assault requires that Council-funded programs assure that confidential communications are kept confidential, and that the programs will not provide information to anyone outside their agency without the consent of the victim.

Protection for these communications is available in 20 states for victims of sexual assault and in 24 states for counseling of domestic violence victims. Five other states have covered all victim counseling as recommended by the President's Task Force on Victims of Crime. Victims often speak to their counselors about their fears and feelings arising from the crime, and believe that they are revealing such information in a confidential environment for therapeutic purposes. To betray that trust would undermine the client-counselor relationship. Victims who realize that their communications may be subject to disclosure may avoid counseling altogether. This occurred in Pennsylvania following a Supreme Court decision that victim/sexual assault counselor communications did not have an absolute privilege. Some centers noticed a decline in calls from victims and some women discontinued counseling for fear their conversations would not be kept private.

Some victims can afford to seek help from private therapists, to whom communications are privileged under other laws, but many victims are not able to afford such services. DRAFT CSSSHB 156 (JUD) would extend the victim-counselor privilege to all victims, regardless of their economic status.

Victim reporting of sexual assault and domestic violence crimes and willingness to cooperate with the criminal justice system has increased dramatically in Alaska over the past 12 years. This is due in part to the victims belief that their communications would remain confidential. Client-counselor privilege should be protected by law. The Council on Domestic Violence and Sexual Assault supports this legislation.


Andy Klamsner, Chair
Council on Domestic Violence and
Sexual Assault

POSITION PAPER / COUNCIL ON DOMESTIC VIOLENCE
AND SEXUAL ASSAULT

VIRGINIA M. ESPENSHADE
ATTORNEY AT LAW

P.O. BOX 1752
HOMER, AK 99603

PHONE: (907) 235-7680
FAX: (907) 235-7564

February 27th, 1992

Representative Kay Brown
Juneau, Alaska
FAX #465-2278

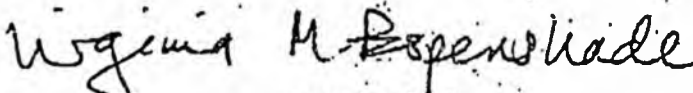
Dear Representative Brown:

I strongly support the bill establishing the privileged status of Client/ Counselor communications for Domestic Violence and Sexual Assault Counselors. I have practiced Family Law for over six years in the Third Judicial District and have dealt with numerous cases involving Domestic Violence. It is my position that the protection of said information is justified by the importance of frank and candid communication and the expectations of privacy in this type of counseling. These cases are often ones dealing with issues of life threatening circumstances, and the interest in encouraging frank assessment far outweighs the interest in availability of evidence.

Please feel free to contact me with any questions.

Thank you for the opportunity to be heard.

Sincerely,



Virginia M. Espenshade

TO: Representative KAY BROWN

FROM: THOMAS R. LUCAS, ESQ.

SUBS: Statutory Counselor / victim privilege

The purpose of this fax is to express my complete and absolute support of your Bill to create a counselor / victim privilege for individuals seeking help after being impacted by domestic violence.

As an attorney and as president of the Board of Directors of Abused Women's Aid In Crisis, Inc. (AWAIC), I am familiar with the arguments both pro and con for the granting of such a privilege. Although the discovery of relevant information is a very important aspect of our judicial system, I firmly believe that a victim's need for confidentiality at a traumatic & devastating point in her life far outweighs the judicial system's need for discovery of counselor / victim files. More specifically, I would oppose any exception to your bill for civil or criminal litigation except where another victim is implicated (e.g. a child).

If you have any questions or desire further information, please do not hesitate to contact me.

TEL: 248-1025

FAX: 248-1032



Alaska Women's Resource Center

111 W. 9th Ave., Suite 4 • Anchorage, Alaska 99501 • (907) 276-0528

February 28, 1992

Rep. Kay Brown
Alaska State House

Dear Kay,

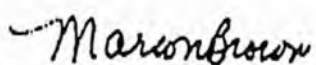
Please accept these comments in support of HB 156. Domestic Violence counseling on an outpatient basis is one of four program specialities at AWRC and represents our second largest program in terms of allocated budget. We have three domestic violence counselor advocates on staff and an ever-growing demand for services in this area.

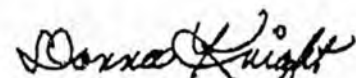
We support HB 156's efforts to extend protection to communications between domestic violence victims and their counselors. Such communications are frequently the same kinds of discussion which might occur between doctor and patient or between lawyer and client. But experience has shown that the successful treatment of domestic violence does not necessarily require the services of a psychiatrist or a psychologist. Consequently, domestic violence counselors do not have the same protection we accord, without debate, to communications with a doctor or with a lawyer.

We have been fortunate at AWRC to avoid unfortunate incidents over the subject because we are also subject to federal confidentiality requirements (as a result of our alcoholism & substance abuse program) which prohibit the release of information without a court order. We urge you to support HB 156 and the important protection it provides to victims of domestic violence.

Sincerely,


Theda Pittman
Executive Director


Marion Brown
Program Director


Donna Knight
Counselor Advocate

POSITION PAPER / COUNCIL ON DOMESTIC VIOLENCE AND SEXUAL ASSAULT

Bill No: DRAFT CSSSHB 156 (JUD)

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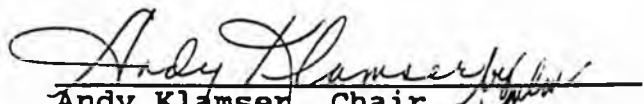
The Council on Domestic Violence and Sexual Assault supports DRAFT CSSSHB 156 (JUD) which provides that communications between a victim and a domestic violence or sexual assault counselor are privileged.

Confidentiality is essential to assure victim safety. The Council on Domestic Violence and Sexual Assault requires that Council-funded programs assure that confidential communications are kept confidential, and that the programs will not provide information to anyone outside their agency without the consent of the victim.

Protection for these communications is available in 20 states for victims of sexual assault and in 24 states for counseling of domestic violence victims. Five other states have covered all victim counseling as recommended by the President's Task Force on Victims of Crime. Victims often speak to their counselors about their fears and feelings arising from the crime, and believe that they are revealing such information in a confidential environment for therapeutic purposes. To betray that trust would undermine the client-counselor relationship. Victims who realize that their communications may be subject to disclosure may avoid counseling altogether. This occurred in Pennsylvania following a Supreme Court decision that victim/sexual assault counselor communications did not have an absolute privilege. Some centers noticed a decline in calls from victims and some women discontinued counseling for fear their conversations would not be kept private.

Some victims can afford to seek help from private therapists, to whom communications who are privileged under other laws, but many victims are not able to afford such services. DRAFT CSSSHB 156 (JUD) would extend the victim-counselor privilege to all victims, regardless of their economic status.

Victim reporting of sexual assault and domestic violence crimes and willingness to cooperate with the criminal justice system has increased dramatically in Alaska over the past 12 years. This is due in part to the victims belief that their communications would remain confidential. Client-counselor privilege should be protected by law. The Council on Domestic Violence and Sexual Assault supports this legislation.


Andy Klamsen, Chair
Council on Domestic Violence and Sexual Assault

3/19/91



advocates for victims of violence

P.O. Box 524 • Valdez, Alaska 99686
24 Hour Crisis Line (907) 835-2999 • Office (907) 835-2980

**Representative Kay Brown
Alaska State Legislature
House Of Representatives
POB U
State Capitol
Juneau, Alaska 99811**

Dear Ms. Brown:

When a victim of domestic or sexual violence is making a decision to seek help, the stigma and issues of safety that are very often life threatening many times impede that decision. More often than not many victims do not get the help that is needed because of the above mentioned concerns. Without adequate psychological support many of the victims fail to report the crime and also to cooperate with the criminal justice system.

The support and help needed is available through specifically trained domestic and sexual violence counselors. However, full recovery requires that victims discuss thoughts and feelings with complete assurance that confidentiality will be maintained. House Bill 156 would provide that confidence that the communications between a victim of domestic or sexual violence would remain confidential. I would like to state my full support of House Bill 156.

If I can be of any further help or assistance please call.

Sincerely,

**Evie Smith
Ex. Director**



Alaska Women's Resource Center

111 W. 9th Ave., Suite 4 • Anchorage, Alaska 99501 • (907) 276-0528

APR 19 1991

House Health, Education & Social Services
April 22, 1991 Hearing - SSHB 156
Testimony by Theda Pittman, Executive Director, AWRC

The Alaska Women's Resource Center is a private, not for profit, corporation which specializes in services for women in the areas of substance abuse; domestic violence; pre-maternal and health information; and employment. With 15 years of service in the community, the Resource Center also provides substantial information and referral services.

Federal regulations on the confidentiality of patient records apply to AWRC because our services include counseling for substance abuse and a small halfway house for women in recovery called "New Dawn."

The following remarks concerning confidentiality and alcohol and drug abuse clients apply to victims of domestic violence or sexual assault as well:

The main reason we protect confidentiality is that it makes our patients feel more secure. They can be more honest because they know that their privacy is protected. The more honest people are, the faster they get well.

- David G. Evans, Attorney
Addiction & Recovery Magazine, 8/90

With respect to the victims of domestic violence or sexual assault they also get well faster when the people who beat them up can't use the victim's own comments against them.

Discussions with counselors often take place at a time when the victim may have fallen prey not only to physical blows, but also to the notion that this violence would not be happening to them if they didn't deserve it, if they hadn't somehow provoked it, if they'd only behave.

This so-called "victim mentality" creates another situation which demands confidentiality, no matter how tempting it might be to act otherwise. Cases of domestic violence or sexual assault can be an incredible frustration in the legal system when a victim drops the charges or is unable to pursue them, but such frustrations can not appropriately be dealt with unless the victim's needs remain primary.

Those of us fortunate enough to feel safe and secure can hardly empathize with those who are in, or who have left, violent situations. Our efforts to help such people can only be undermined by laws which make their recovery efforts public information. Even worse, we may become part of the problem. I urge your support for SSHB 156.

Thank you for providing this opportunity to present testimony.



Kenai-Soldotna Women's Resource & Crisis Center

Representative Kay Brown
Alaska State Legislature
P.O. Box V
Juneau, Alaska 99811

April 18, 1991

Dear Representative Brown,

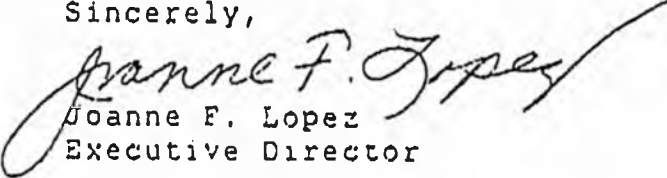
We are writing in support of Sponsor Substitute for HB 156. As I am sure you know, we feel this bill is vital to the legal protection of victim records.

Our work with victims of domestic violence and sexual assault depends not only on our ability to keep confidence, but a victim's trust in our commitment to do so. If and when a victim discovers that her efforts to heal, by sharing confidential information, have been sabotaged by our agency through the judicial system, she will no longer trust us, one of the few agencies committed to her safety, welfare and ongoing support.

As is so often the case, the statutes, as they stand, allow others to make a victim's choices for her. Our work to empower victims to make their own choices, to make their own decisions concerning to whom they will or will not divulge information, will be enhanced by the passage of this bill. We have a social duty to insure that victims receive advocacy and justice.

In the early 1980's, the President's Task Force on Victims of Crime recommended that state governments enact legislation providing protection for victim counseling. We look forward to the passage of Sponsor Substitute for HB 156 as Alaska's commitment to the empowerment of victims.

Sincerely,


Joanne F. Lopez
Executive Director

KODIAK WOMEN'S RESOURCE AND CRISIS CENTER



P.O. BOX 2122, KODIAK, ALASKA 99615
Business Phone: (907) 486-6171 Crisis Line Phone: 486-3625

April 18, 1991

Representative Kay Brown
PO Box V
State Capitol
Juneau, AK 99811

I have worked as the Executive Director at the Kodiak Women's Resource & Crisis Center for the past four years. I support HB156 with the amendments offered in the House.

This bill, which relates to privileged communication in cases of Domestic Violence & Sexual Assault, addresses long-standing concerns re: disclosure of communications between Domestic Violence & Sexual Assault victims and counselors.

Current Alaska law discourages some victims from coming forward to seek needed services by allowing the Court System to subpoena records that disclose all information given in trust to Domestic Violence & Sexual Assault counselors.

Victims of Domestic Violence & Sexual Assault share deeply personal thoughts and feelings with Domestic Violence & Sexual Assault counselors and the relationship that develops is fragile and requires trust. In order to encourage and protect that relationship, Confidentiality must be assured for these personal and private communications. Victims of Domestic Violence & Sexual Assault should be allowed to choose if and when this information is to become public record.

HB156 with the amendments offered in the House, would protect victim's rights to privacy and encourage victims of Domestic Violence & Sexual Assault to reach out for safety and counseling.

Sincerely,

Lotitia A. Raub
Executive Director

lar/dw

Sitkans Against Family Violence



April 16, 1991

Rep. Kay Brown
P.O. Box V
Juneau, AK 99811

Dear Rep. Brown,

I am writing in support of HB 156, which would provide confidential protection to the communications between domestic violence and sexual assault counselors and their clients.

People recovering from the trauma of abuse or assault need to be able to seek appropriate counseling without fear that the deeply personal information they share might be subpoenaed for use in the courtroom. The same information, discussed with a physician or therapist, would be held confidential. Counselors in domestic violence and sexual assault programs are often more appropriate, and are certainly the most accessible means of support for victims of violence. The legal protection of confidentiality must be extended to communications between domestic violence and sexual assault counselors and their clients.

Thank you for your attention to this matter.

Sincerely,

Kathleen McGraw
Executive Director



S. T. A. R.

Bus: 276-7279
24-Hour Crisis:
276-STAR (7827)

APR 22 1991

FAX #465-2278

April 18, 1991

Representative Kay Brown
Alaska House of Representatives
Pouch V
Juneau, Alaska 99811

RE: House Bill 156 (Confidentiality of Records)

Dear Representative Brown,

Standing Together Against Rape (S.T.A.R.) would like to take this opportunity to strongly urge you to support passage of House Bill (HB) 156. This agency has worked with victims of sexual assault since 1978. Many of our victims reveal personal and private details of their lives that they would not wish to be disclosed in a courtroom. There is a federal law in effect which provides this confidentiality to victims, but no corresponding state legislation.

At the present time, when S.T.A.R. is served with a subpoena we must attempt to get the subpoena quashed.

For over 13 years S.T.A.R.'s education program has encouraged people to report sexual assault and that telling is the first step to healing. In the event this bill is not passed, S.T.A.R. has grave concerns that victims will not feel safe in telling us or coming to our office for crisis intervention.

Therefore, so that we can continue to aid our clients and future victims who contact this agency, S.T.A.R. requests passage of HB 156 so that confidentiality between our clients and our staff can remain private. Our clients trust us to keep their sexual assault confidential. Our clients should be the only ones to authorize disclosure of their records.

Thank you for your consideration of this request for passage of HB 156.

Sincerely,

Mary Lou Parsons
Mary Lou Parsons
Executive Director

STANDING TOGETHER AGAINST RAPE

1057 W. Fireweed ~~292582X~~ • Anchorage, Alaska ~~29508X~~ 99503



A United Way Agency



South Peninsula Womens Services, Inc.

MAR 27 1991

March 22, 1991

Representative Kay Brown
Alaska State Legislature
P.O. Box V
Juneau, Alaska 99811

Dear Rep. Brown:

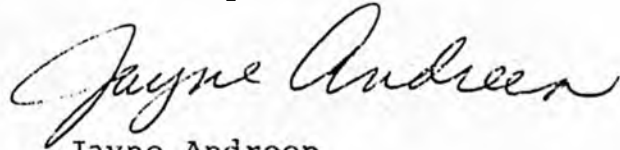
Thank you for your recent letter concerning HB156. The need for this type of legislation has long been apparent to counselors and advocates working with victims of family and sexual violence.

Despite increased public awareness on domestic violence and sexual assault, a large portion of the population still feels that family problems should remain within the family. The difficulty many victims face in reaching out is a sense that they are being disloyal to their partner. For many there is also the very real danger that by going outside the home for help they may be at an even greater risk. The shame and fear many victims feel is often an inhibitor in obtaining assistance.

One of the most basic premises of S.P.W.S. has been that of confidentiality and safety; the two must go hand in hand. Victims need a safe place in which to openly discuss their situation without fear of retaliation or judgement. They need someone who can help them identify the full gamut of their options and ascertain the appropriate course of action for the individual's situation. S.P.W.S. always has and always will place the highest value on granting victims this very basic safety mechanism. All staff are trained from the beginning to safeguard client information with the exception of child abuse and the threat of danger to another. Yet, without legislative support, the agency is continually faced with the threat of subpoenas and search warrants. Limited agency resources have had to go toward quashing subpoenas and protecting this basic issue. It is the agency's policy to go to the point of being held in contempt of court in order to protect the client's confidences. This goes against our very grain as we are an agency that believes the most effective way to stop violence in the home is by using the existing legal structure.

HB156 will go a long way in improving the effectiveness of domestic violence and sexual assault agencies around the state. On behalf of the staff and Board, and most importantly the clients of S.P.W.S., I extend to you my full support.

Sincerely,



Jayne Andreen
Executive Director

cc: Representative Mike Navarre
Representative Gail Phillips
Senator Paul Fischer

JA/ca

Tundra Women's Coalition

P.O. BOX 1537 • BETHEL, ALASKA 99559 • 907 343-3455

April 18, 1991

Representative Kay Brown
P.O. Box V
Juneau, Alaska 99811

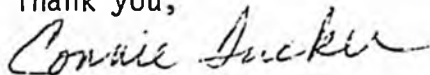
Dear Representative Brown:

I am writing in support of House Bill #156. I believe this bill is necessary to ensure that communications between victims of domestic violence and sexual assault and their counselors will be confidential.

Confidentiality is essential for victims if they are seeking help and healing. As an advocate/counselor at a women's shelter, I see the trauma victims suffer due to the betrayal of the perpetrators. If the victims' trust in their counselors is also betrayed, where are they going to turn for help?

I urge you to consider this important issue and support House Bill #156.

Thank you,



Connie Tucker
Outreach Advocate

April 16, 1991

Representative Kay Brown
P.O. Box V
Juneau, Alaska 99811

Dear Representative Brown:

I am writing in support of House Bill #156. Victims of Domestic Violence or Sexual Assault need the security of confidential communications with their counselors. Many victims fear disclosure and therefore avoid the counseling they need. For the safety of clients and staff, it is critical that the location of Shelters/Safe Houses and the identity of their staff not be disclosed.

Sincerely,



Anne Marie Siebenlist

April 16, 1991

APR 22 1991

Representative Kay Brown
P.O. Box V
Juneau, Alaska 99811

Dear Representative Brown:

I am writing in support of HB156. I speak as a survivor of domestic violence and a former DV advocate.

I strongly urge you to pass this bill. Women and children who work and live in Safe Homes are in danger. On several occasions in our nation, women and children have been killed on the premises of Safe Homes, by spouses of residents. It is our duty to protect these innocent victims. This bill will be an aide in accomplishing that. Batterers are often in a state of denial and believe that the Safe Home and staff are to blame for their family leaving. Their violent behavior is turned towards the counselors and the facility. With this law in effect I feel more victims will reach out for the help they so desperately need. Thank you for your time and support.

Sincerely,



Michele Hall
P.O. Box 2025
Bethel, AK 99559

April 16, 1991

Representative Kay Brown
P.O. Box V
Juneau, Alaska 99811

Dear Representative Brown:

I support House Bill 156. I believe that having this Bill will enable women of Domestic Violence and Sexual Assault to be protected of any harm that may come upon them. Being able to be protected of their confidentiality with whom they want would I believe help the victims first. As a former victim of domestic violence having knowledge that confidentiality for my protection against anyone, be it my husband, boyfriend, families etc. be in effect would make me have alot of confidence in myself as a woman and erable me to strive on. When I was in need of help I was afraid to go to a shelter because I thought that my husband would find out where I was. So I strongly support House Bill 156 because I know that alot of women out there have the same feelings that I went through.

Sincerely,

Jenny Camille

Jenny Camille



Women In Safe Homes

*A Safe Alternative to
Family Violence*

P.O. Box 6552
Ketchikan, Alaska 99901
(907) 225-9474

Representative Kay Brown
Juneau, Alaska

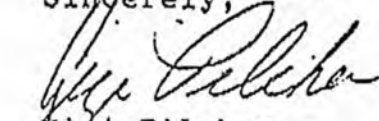
Dear Representative Brown:

I am writing to express my strong support of H.B. 156. I have been a victim's advocate for fourteen years and have worked with several thousand victims of domestic violence and sexual assault during this time.

I believe that victims of sexual assault/abuse especially should have the right to confidentiality when requesting and receiving services from domestic violence/sexual assault programs.

Thank you for your work on H.B. 156, the dedication and commitment you have displayed for the rights of victims is commendable.

Sincerely,


Gigi Pilcher
Executive Director

STATE OF ALASKA
1992 LEGISLATIVE SESSION

BILL NO. SSHB 156

FEB 24 1992

Revision Date: _____

Department Affected: Administration

Title: Confidentiality/Domestic Violence Counselors

BRU: Public Defender

Component: Public Defender

Sponsor: Brown

Requestor: House Judiciary

COMPONENT SERIAL NO.

1	6	3	1
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Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	0	0	0	0	0	0

CAPITAL	0	0	0	0	0	0
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REVENUE FUND SOURCE:	0	0	0	0	0	0
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FUNDING: (Thousands of Dollars)

GENERAL FUND	0	0	0	0	0	0
FEDERAL FUNDS	0	0	0	0	0	0
OTHER FUND SOURCE:	0	0	0	0	0	0
TOTAL	0	0	0	0	0	0

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

Estimate of current year impact: None

ANALYSIS: (Attach a separate page if necessary.)

Prepared by: Kevin Brooks
Division: Administrative Services

Phone: 465-2277
Date: February 21, 1992

Approved by Commissioner: Nancy Bear Usa
Agency: Administration

Date: _____

Distribution (by preparer): Leg. Fin., Legislative Sponsor, Requestor, OMB/DBR, Gov. Legis. Ofc., & Impacted Agency(ies).

FISCAL NOTE

JAN 17 1992

BILL NO. SS HB 156

STATE OF ALASKA
1992 LEGISLATIVE SESSION

Revision Date: _____ Department Affected: Public Safety

Title: An Act providing that communications BRU: Domestic Violence & Sexual Assault

are privileged. Component: Domestic Violence & Sexual Assault

Sponsor: Brown, et al

Requestor: House Judiciary Committee COMPONENT SERIAL NO.

5	2	1
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EXPENDITURES/REVENUES: (Thousands of Dollars) (inflation not included)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
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REVENUE	-0-	-0-	-0-	-0-	-0-	-0-
FUND SOURCE:						

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
FUND SOURCE:						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

Estimate of current year impact: None

ANALYSIS: (Attach a separate page if necessary.)

No fiscal impact is anticipated.

Prepared By: Marcia Lynn McKenzie Phone: 465-4356

Division: Council on Domestic Violence & Sexual Assault Date: 1-15-92

Approved by Commissioner: Richard L. Burton

Agency: Department of Public Safety Date: 1-15-92

Revision Date: _____

Department Affected: Department of Law

Title: "...communications between victim and...
counselor are privileged..."

BRU: Prosecution

Sponsor: Representative Brown

Component: All

Requestor: House Judiciary Committee

COMPONENT SERIAL

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Expenditures/Revenues: (Thousands of Dollars)

85 through 91

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL						
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REVENUE FUND SOURCE:						
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FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER FUND SOURCE:						
TOTAL						

POSITIONS:

FULL-TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART-TIME						
TEMPORARY						

Estimate of current year impact: _____

ANALYSIS: (Attach a separate page if necessary.)

Please see the attached analysis.

Prepared by: Richard I. Peques, Director
 Division: Administrative Services

Phone: 465-3672
 Date: February 21, 1992

Approved by Commissioner: Charles E. Cole, Attorney General
 Agency: Department of Law

Date: February 21, 1992

Distribution (by preparer): Leg. Fin., Legislative Sponsor, Requestor, OMB/DBR, Gov. Legis. Ofc., & Impacted Agency(ies).

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. SSHB 156

This bill amends AS 18.66 to add a section which provides that communications between a domestic violence or sexual assault victim and a domestic violence or sexual assault counselor are privileged. In addition to making these communications privileged, the bill prohibits the disclosure of the location of certain types of facilities used by the victims of these crimes, and prohibits the disclosure of the identities of domestic violence or sexual abuse counselors. The bill also provides several exceptions to these privileged communications, primarily dealing with information regarding child abuse or neglect, and when failure to disclose a privileged communication is likely to result in a clear, imminent risk of serious physical injury or death of the victim or another person. Similarly, these communications would no longer be privileged if they caused the failure of a person to testify as a witness and resulted in an inference unfavorable to the state's cause or the cause of a domestic violence or sexual assault victim. We do not believe that the bill will have a fiscal impact on the Department of Law.

